## Opinion.

Filed Nov. 23, 1926.

THOMSON, J.:

This is an action brought by the executors of the will of Philander C. Knox, deceased, against the Collector of Internal Revenue of this District, to recover additional tax for the year 1920, the amount of which was assessed by the Government, and paid by the decedent under protest.

The facts in the case are briefly these: Senator Knox, decedent, built in about the year 1887 a residence in the city of Pittsburgh, at a cost of approximately $172,000.00. The building was occupied by Mr. Knox as his residence from the time it was built until 1901, when he was elected to the United States Senate. At that time the Senator moved his residence to the Schenley Hotel, Pittsburgh, from which residence he voted until the time of his death in 1921. From 1901 until 1920 he leased the property to various tenants, and in 1920 sold it to one James H. Hammett for the sum of $73,706.79.

The plaintiffs contend that the property was worth in the neighborhood of $120,000.00 on March 1, 1913, and claim as a loss, the difference between that sum and the amount for which it was sold in 1920, and seek to deduct that amount from the income of the taxpayer for the year 1920 under Section 214 (a) (5) of the Revenue Act of 1918. This particular section of the law reads as follows:

> "That is computing net income there shall be allowed as deductions:
>
> "5. Losses sustained during the taxable year

and not compensated for by insurance or otherwise, *if incurred in any transaction entered into for profit,* though not connected with the trade or business."

The defendant's contention is that the purchase of the property by a taxpayer for his residence is not a transaction entered into for profit under the Revenue Acts. He also contends that the property had the same value in 1913 that it had in 1920, at the time of its sale and that hence no deductible loss in any case was sustained by the taxpayer.

The evidence justifies the finding which I now make, that the fair value of the property as of March 1, 1913, was $120,000.00, and if the loss in the sale is a deductible loss under the section of the Revenue Act above recited, the difference between that value and the price at which the property sold, would represent that loss. We are, therefore, confronted with the question of the proper interpretation of the law in question under the facts as they are conceded to be. The provisions of section 5 are also contained in the Revenue Acts of 1921, 1924 and 1926. Regulations 45 as promulgated April 17, 1919, provided as follows:

"Art. 141. *Losses.* * * * A loss in the sale of an individual's residence is not deductible."

This regulation was amended on January 28, 1921, to read as follows:

"Art. 141. *Losses.* * * * A loss in the sale of residential property is not deductible unless the property was purchased or constructed by the taxpayer with a view to its subsequent sale for pecuniary profit."

This same provision is contained in Regulations 62, under the Revenue Act of 1921, and in Regulations 65, under the Revenue Act of 1924.

The question is, is the purchase of property by a taxpayer for his residence a transaction entered into for profit; if not, where the taxpayer ceases to use the property as his residence and leases it to another as a residence, is the status changed, making the renting of the property a new transaction entered into for profit.

In the Solicitor's Law Opinion 780 (1 Cumulative Bulletin 117) it is said:

> "The expression 'transaction entered into for profit' clearly means a complete business venture from inception to conclusion. The deduction allowed is for losses sustained in any transaction *'entered into'* for profit. The intent to make a profit must have existed at the commencement of the enterprise or the right to deduct losses incurred is not within the contemplation of the statute. To construe the words 'transaction entered into for profit' as referring only to the conclusion of the venture—that is, the sale of the property—would result in a practical nullification of the statute. * * *
>
> "Where a loss incurred in the sale of residential property is deductible in arriving at net income must be determined by the object or intent of the individual in buying or constructing the property."

The provision of the law under which the plaintiff claims was not in any Revenue Act prior to 1918,

but has been in all the Revenue Acts from 1918 to and including the Act of 1926. Except in one appeal before the Board of Tax Appeals no case is reported in the Courts interpreting this provision. In the case of the appeal of John J. Madden, 2 U. S., Board of Tax Appeals, page 702, decided on September 30, 1925, the Board held that the building of a house to meet the taxpayer's requirements for a home was not a transaction entered into for profit. In office decision 1148 (5 Cumulative Bulletin, page 141) it is said:

> "It is held that if a loss is deductible at all it is deductible under section 214 (a) 5 of the Revenue Act of 1918 as a loss sustained in a transaction entered into for profit. However, the mere renting of property purchased without the intention at the time of purchase of making a pecuniary profit thereon does not constitute a 'transaction entered into for profit' within the meaning of the statute, and as the taxpayer in the instant case purchased the property for a home, it was not his intention at the time to subsequently sell it for profit. It is therefore held that any loss sustained is not deductible for the purposes of the Revenue Act of 1918."

Ever since the Act of 1918 was passed the Regulations have provided that a loss in the sale of property purchased by a taxpayer for his residence is not a loss in a transaction entered into for profit. The original Regulations 45 provided that a loss in the sale of an individual's residence is not deductible. The amendment of January 28, 1921, provided that a loss on

the sale of residential property is not deductible unless the property was purchased or constructed by the taxpayer with a view to its subsequent sale for pecuniary profit. The one is an amendment of the other and can scarcely be said to have effected any material change. Both relate to the beginning of the transaction, viz: the purchase or construction of the property in question.

The decisions of the department have been uniform and all have held the loss in such cases not a deductible loss. The reinactment of the law year after year without change must be taken as an indication not only to continue in force the existing law but to adopt the practice of the department in interpreting and applying it. It was said in *United States v. Anderson,* 46 Sup. Ct., 131:

> "By thus adopting without material change, the corresponding provisions of earlier acts, Congress might have been deemed to have recognized and adopted the established practice of the Department interpreting and applying them. *National Lead Co. v. United States,* 252 U. S., 140."

See also *Provost v. United States,* 46 Sup. Ct., 152.

The issuing of Regulations by the Secretary of the Treasury is subsequently made his duty by the Revenue Act of 1918, and other Revenue Acts, and the Supreme Court has held that it is settled by the decisions of that Court that a regulation by a department of Government, addressed to and reasonably adapted to the enforcement of an Act of Congress, the administration of which is confided to such depart-

ment, has the force and effect of law if it be not in conflict with express statutory provision. *United States v. Grimaud,* 220 U. S. 506, and many other cases.

It appears to me that the rulings of the department are in harmony with the provisions of the law. The transaction in question is one which began with the purchase and ended with the sale. The transaction was the ownership of the property and was ended when the property was sold. It cannot be fairly said that this was entered into for profit but was entered into for the purpose of providing a home for the taxpayer. The transaction which was begun by the leasing of the property ended when the lease was ended, and it is not suggested that this was a loss. This is true of each succeeding lease. The transaction which was ended by the sale of the property seems clearly to have been the one which was begun by its purchase.

I am, therefore, compelled to hold that the plaintiffs' position that the loss claimed by the decedent as a deduction from taxable income under section 214 (a) of the Revenue Act of 1918, cannot be sustained. It appears, however, that in June, 1925, the plaintiffs filed with the defendant as Collector of Internal Revenue, a claim for refund of the amount of taxes which had been paid under protest, which claim was denied except as to the amount of $4,863.04, which sum was allowed, but has not in fact been paid by the Government. The allowance of this claim is conceded by the defendant in the affidavit of defense filed.

Plaintiff is, therefore, entitled to judgment in this action in the sum of $4,863.04 with interest from the date of payment thereof, to wit, from February 2, 1925.

Judgment may, therefore, be entered accordingly.

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## Plaintiff's Request for Findings of Fact, Conclusions of Law and Order of Court.

Filed January 21, 1927.

Comes now the plaintiff, by James Walton, Esquire, its counsel, and, in accordance with Rule 38 of the United States Supreme Court as revised, Paragraph 2, adopted June 8, 1925, and effective July 1, 1925, considering itself aggrieved by the findings of fact and conclusions of law as made and handed down by the Honorable Court in the above-entitled cause on the 23rd day of November, 1926, and considering the facts hereafter set forth to have been proven and deeming them material to a hearing and determination of this cause upon a writ of error to the Circuit Court of Appeals and similarly so considering with respect to the conclusions of law hereafter set forth, does, therefore, respectfully request the Honorable Court to find as facts and as conclusions of law as follows:

### FINDINGS OF FACT.

I.

Philander C. Knox died October 12th, 1921. At the time of his death he was a citizen of Pennsylvania

and a resident of Pittsburgh, Allegheny County, in the Western District of said state. His last will and testament was duly admitted to probate in the Orphans Court of Allegheny County, and on October 21st, 1921, letters testamentary were duly granted to the plaintiffs, who thereupon duly qualified and entered upon the duties of their office. The plaintiff James R. Tindle is a citizen of the Commonwealth of Pennsylvania, residing at Valley Forge, Chester County, in said state, and the plaintiff The Union Trust Company of Pittsburgh is a Pennsylvania corporation with its principal office and place of business at Pittsburgh, Allegheny County, Pennyslvania. By its articles of incorporation, the Union Trust Company of Pittsburgh is authorized and empowered to act as executor, trustee and in other fiduciary capacities.

II.

The defendant D. B. Heiner is a citizen of the Commonwealth of Pennsylvania and a resident of Kittanning, Armstrong County. Said Armstrong County is in the Western District of Pennsylvania. Said Heiner, at the time of the grievances set forth in and at the date of filing the statement of claim is Collector of United States Internal Revenue for the Twenty-third District of Pennsylvania, which district comprises within its borders the County of Allegheny.

III.

Within the time prescribed by law, the said Philander C. Knox, duly made and filed his income tax return for the calendar year 1920 on Form 1040, which

is the form prescribed by the Treasury Department. Said income tax return showed a total tax liability of $2,991.68, which amount was duly paid to the defendant within the time prescribed by law.

IV.

In his said tax return Mr. Knox claimed as a deduction from income the sum of $47,000.00, representing a loss suffered on the sale of certain real property situate at 5044 Ellsworth Ave., Shadyside, Pittsburgh, Pa. Taxpayer computed such loss as follows:

| | | |
|---|---|---|
| March 1st, 1913, fair value | | $120,000.00 |
| Depreciation sustained | $ 3,000.00 | |
| Selling Price | 70,000.00 | 73,000.00 |
| Loss | | $ 47,000.00 |

Such loss was claimed as a deduction from taxable income by virtue and under authority of section 214, (a), 5, of the Revenue Act of 1918 which reads—

> "That in computing net income there shall be allowed as deductions:—
>
> * * * * * * *
>
> (5) Losses sustained during the taxable year and not compensated for by insurance or otherwise if incurred in any transaction entered into for profit though not connected with the trade or business."

V.

The facts with reference to the said transaction are that in the years 1887-1888 former United States

Senator Philander C. Knox built a residence at 5044 Ellsworth Avenue, Shadyside, Pittsburgh, Pa. A short time later he built a stable. Both buildings were of the very highest type of construction.

The land itself was acquired in three transactions. In 1886 the greater part of the land was acquired for an indicated consideration of ten thousand ($10,000.00) dollars from D. Aiken, Jr. In 1887 an additional strip was acquired from Aiken for an indicated consideration of fourteen hundred ($1,400.00) dollars. In 1892 another strip was acquired from H. C. Frick for the nominal sum of one ($1.00) dollar. The actual consideration plaintiffs have been unable to establish, however, the United States Revenue Field Agent who examined this case reports on page 2 that the total cost of the land was $16,400.00, which is probably correct.

The cost of the buildings has been established as of the date of construction, to be the sum of $119,458.00. Similarly with respect to the stable, the cost as of the date of construction is fixed at $10,226.00.

About the year 1901, the Senator having been elected to the United States Senate, leased the entire property to Mr. W. E. Corey, former President of the Unitd States Steel Corporation for a period of 3½ years, the lease being dated October 1st, 1901 and providing for an annual rental of eight thousand ($8,000.00) dollars. Upon the expiration of this lease a new lease was made on April 1st, 1905, having a duration of ten years and providing for an annual rental of sixty-five hundred ($6,500.00) dollars. This lease was followed by a third lease dated April 1st,

1915, having a duration of one year for a stated annual rental of six thousand ($6,000.00) dollars.

Other leases followed these, for the property was tenanted by various parties from time to time down to November 13th, 1920, when the property was sold to Mr. James H. Hammett.

At no time after the leasing of the property to said W. E. Corey in 1901 was it occupied by the Senator or by his family or by any of his relatives. He forthwith established an actual and legal residence at a place elsewhere in Pittsburgh, and this place, at the date of the sale on November 13, 1920, was the Schenley Hotel, Forbes Street, from which residence he voted. In addition to the Schenley Hotel legal residence, the Senator maintained temporary residences in Washington, D. C., and Valley Forge, Chester County, both of which he owned in fee.

VI.

I find as a fact that the cost of the entire property was approximately $172,000.00.

VII.

I find as a fact that the March 1, 1913, fair market value of the entire property was $120,000.00.

VIII.

I find as a fact that the total consideration which Mr. Knox received for the entire property was $73,706.79.

IX.

The Commissioner of Internal Revenue, in auditing Senator Knox's tax return, made two changes or adjustments—

First he disallowed the $47,000.00 claimed loss on the sale of the property at 5044 Ellsworth Avenue, and

Second, he added $9,500.00 to income which he claimed was rental.

By this process $19,659.73 alleged additional tax was computed against the taxpayer, it was duly assessed, it was paid under protest, a claim for refund was filed and the claim for refund was rejected by the Commissioner of Internal Revenue on August 20, 1925. This suit was filed January 22, 1926.

X.

The plaintiff's contention with respect to the $9,500.00 item is conceded by the defendant and, subsequent to the date of the trial, a refund was made to the plaintiff to the extent such item was a factor in the alleged additional tax; to wit, $4,863.04.

CONCLUSIONS OF LAW.

I.

I find, as a conclusion of law, that the leasing of the property in the year 1901 and the then permanent abandonment of same by Senator Knox as his residence, terminated what originally may have been a transaction entered into not for profit.

II.

I find, as a conclusion of law that the permanent abandonment of the residence by the plaintiff in 1901 and the continuous subsequent leasing of same, constituted a new transaction,—a transaction entered into for profit and that the loss suffered in the sale of the property in 1920 is a proper and legal deduction in the ascertainment of taxable income.

III.

I find, as a conclusion of law, that the amount of said deduction is the difference between the March 1, 1913, fair market value of the property, to wit, $120,000.00, such sum being less than the cost thereof, and the sum of $73,706.79, the consideration received, or $46,293.21.

IV.

I find, as a conclusion of law, that in determining whether a transaction is entered into for profit or not for profit, the status of the property at March 1, 1913, the effective date of the sixteenth amendment to the United States constitution (known as the income tax amendment) is decisive in making the determination, provided the property represented by the transaction was owned prior thereto.

V.

I find, as a conclusion of law, that plaintiff is entitled to a judgment against the defendant in the amount sued for as set forth in the statement of claim,

together with costs and statutory interest, subject however to adjustment and modification in the amount of $4,863.04 which has already been refunded to the plaintiff and such further adjustment as results from revising or correcting the loss on the sale of the former residence from $47,000.00 to $46,293.21.

Respectfully submitted,

JAMES WALTON,
*Attorney for Plaintiff.*

January 17, 1927.

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## Order of Court.

(a) ADOPTING PLAINTIFF'S REQUESTED FINDINGS OF FACT

(b) REJECING PLAINTIFF'S REQUESTED CONCLUSIONS OF LAW

And now, to wit, on this 21st day of January, 1927, this cause comes before the court upon the plaintiff's request for specific findings of fact and conclusions of law, and the court being fully advised in the premises and having heretofore, on November 23, 1926, handed down its opinion in the case, does therefore find and decline to find as follows:—

Each and every one of plaintiff's requested findings of facts, numbered I to X inclusive, are approved and adopted in their entirety, the same being not inconsistent with the court's opinion heretofore filed:

Each and every one of plaintiff's requested conclusions of law, numbered I to V inclusive, are disap-

proved and rejected in their entirety, the same being contrary to the court's opinion heretofore filed.

W. H. S. THOMSON,
*Judge.*

*Eo die,* plaintiff objects to the above action of the court in rejecting his requested conclusions of law and at his instance exception noted.

W. H. S. THOMSON.

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## Order.

Filed Jan. 21, 1927.

And now, to wit, January 21, 1927, it appearing by stipulation of counsel herewith filed, that the sum of $4,863.04, the amount conceded to be due plaintiff in the affidavit of defense, was paid by the defendant to the plaintiff prior to the previous entry of judgment herein; by virtue of this fact and under said stipulation, it is hereby ordered and adjudged that the said judgment be, and the same is hereby vacated and set aside. Thereupon counsel for plaintiff presents to the Court certain requests for findings of fact and conclusions of law, which requests I have answered and file the same herewith, as if answered and filed with the original opinion; and now, the day and year aforesaid, judgment is hereby entered in favor of the defendant with costs.

W. H. S. THOMSON,
*Judge.*

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## Assignments of Error.

Filed Jan. 25, 1927.

The plaintiff in this action, in connection with his petition for a writ of error, makes the following assignments of error which he avers occurred upon trial of the cause, to wit:

I.

The court erred in declining to make and rejecting plaintiffs requested conclusion of law numbered I, as follows:

> "I find, as a conclusion of law, that the leasing of the property in the year 1901 and the then permanent abandonment of same by Senator Knox as his residence, terminated what originally may have been a transaction entered into not for profit."

II.

The court erred in declining to make and rejecting plaintiffs requested conclusion of law numbered II, as follows:

> "I find, as a conclusion of law that the permanent abandonment of the residence by the plaintiff in 1901 and the continuous subsequent leasing of same, constituted a new transaction,—a transaction entered into for profit and that the loss suffered on the sale of the property in 1920 is a proper and legal deduction in the ascertainment of taxable income."

III.

The court erred in declining to make and rejecting plaintiffs requsted conclusion of law numbered III, as follows:

"I find, as a conclusion of law, that the amount of said deduction is the difference between the March 1, 1913 fair market value of the property, to wit, $120,000.00, such sum being less than the cost thereof, and the sum of $73,706.79, the consideration received, or $46,293.21."

IV.

The court erred in declining to make and rejecting plaintiffs requested conclusion of law numberd IV, as follows:

"I find, as a conclusion of law, that in determining whether a transaction is entered into for profit or not for profit, the status of the property at March 1, 1913, the effective date of the sixteenth amendment to the United States constitution (known as the income tax amendment) is decisive in making the determination, provided the property represented by the transaction was owned prior thereto."

V.

The court erred in declining to make and rejecting plaintiffs requested conclusion of law numbered V, as follows:

"I find, as a conclusion of law, that plaintiff is entitled to a judgment against the defendant

in the amount sued for as set forth in the statement of claim, together with costs and statutory interest, subject however to adjustment and modification in the amount of $4,863.04 which has already been refunded to the plaintiff and such further adjustment as results from revising or correcting the loss on the sale of the former residence from $47,000.00 to $46,293.21."

WHEREFORE the plaintiff prays that the judgment of the District Court may be reversed.

JAMES WALTON,
*Attorney for Plaintiff.*

Pittsburgh, Penna.
January 25, 1927.

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## Stipulation for Printing Record.

And now, to wit, January 24th, 1927, it is hereby stipulated and agreed by and between counsel for plaintiff and counsel for the defendant that the following be printed as and constitute the record on writ of error in the above case before the United States Circuit Court of Appeals for the Third Circuit, viz.:

1. Docket entries.

2. Statement of Claim.

3. Affidavit of defense.

4. Request for findings of fact and conclusions of law *ex parte* plaintiff.

5. Opinion of the court filed November 23, 1926.

6. Supplemental opinion of the court filed January 21, 1927, together with order of judgment in favor of the defendant which is a part thereof.

7. Assignments of error.

8. This stipulation.

JAMES WALTON,
*Attorney for Plaintiff.*

W. J. AIKEN,
Asst. U. S. Attorney,
*Attorney for Defendant.*

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## Certificate.

*Western District of Pennsylvania, ss:*

I, J. Wood Clark, Clerk of the District Court of the United States for the Western District of Pennsylvania, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the record sur writ of error in the above entitled case, so full and entire as the same remains of record and on file in my office, in the City of Pittsburgh, in said District.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of the said Court, at Pittsburgh, this 1st day of February, A. D. 1927.

J. WOOD CLARK,
*Clerk.*

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# In the United States Circuit Court of Appeals for the Third Circuit

MARCH TERM, 1927

No. 3594 (List No. 3)

J. R. TINDLE ET AL., EXECUTORS P. C. KNOX, DECEASED, PLAINTIFFS IN ERROR

*v.*

D. B. HEINER, COLLECTOR, DEFENDANT IN ERROR

And afterwards, to wit, on the 8th day of March, 1927, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley, and Honorable J. Warren Davis, circuit judges, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 4th day of April, 1927, come the parties aforesaid by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following decision: James R. Tindle and the Union Trust Company of Pittsburgh, co-executors of the last will and testament of Philander C. Knox, deceased, plaintiffs below, plaintiffs in error, *v.* D. B. Heiner, Collector of Internal Revenue, defendant below, defendant in error.

In Error to the District Court of the United States for the Western District of Pennsylvania

Before BUFFINGTON, WOOLLEY, and DAVIS, Circuit Judges

BUFFINGTON, *Circuit Judge:*

This case centers around the word "transaction"—"transaction entered into for profit"—as used in the revenue act of 1918 (40 Stat. c. 18, section 214, a 5), in respect to losses allowed as deductions in income-tax returns. What, in point of fact, is the transaction we are here dealing with? Was it one Congress meant to cover by this section? Viewed as an entirety, the transaction involved is this: In 1887–1888 the late Philander C. Knox bought ground in the city of Pittsburgh and built a residence thereon at a cost, in all, of $172,000. In 1920 he sold this property and residence for $73,706.79, so that, taken as a whole, the transaction begun in 1887 and ended in 1920 constitutes a single whole from the viewpoint of buying and selling; but when this single whole is considered from the standpoint of the use to which the property had, meanwhile, been put

it resolves itself into two distinct and wholly different transactions. First, the property was used by him as a residence; he built the house for that purpose and so used it until 1901. This transaction was therefore a distinctively home, residential one. In 1901, however, he entered into national public life and gave up the property as a residence, and never afterwards occupied it. He acquired a residence by living in a different ward of the city and retained it up to the time of his death for occasional residential and seasonal voting purposes, and, as stated by counsel at the hearing, his regular winter residence was in Washington City, where he bought and occupied a home, and his summer residence in a home he owned at Valley Forge, Pennsylvania.

With the ending of his occupation of his Pittsburgh home he rented the same on long-term leases. His first lease was in October, 1901, for three and a half years; later for a term of ten years and thereafter for shorter terms, until the property was finally sold. With the giving up of his residence all sentimental connection in the use of the house as a home ended and thereafter the use of the property was by others under lease from him during the running of the first lease for three years, to wit, from October 1, 1901, and then from April 1, 1905, for ten years. During the running of these leases he was of course unable to sell the property by reason of the use he was making of it and the leases he had given for his own profit. Such being the status of the transaction, the ordinary one of owning real estate for leasing purposes, the situation of the property under the second or ten-year lease when the income tax law of 1913 was passed, was a distinctively nonresidential and a distinctively business leasing of real estate for profit. We think we are justified in regarding the transaction here involved by its then and subsequent status. The situation was in no wise different than it would have been had he always owned and used the property for renting purposes and never for residential purposes, because the residential use had finally and forever ceased at the time of the passage of the income tax law. What, then, was the fact and status in money value of this property when the income tax law of 1913 was passed? It was a distinctively renting transaction and in this transaction was involved the use for renting of property of the agreed upon then value of $120,000. Any system of bookkeeping in this transaction would have had charged against it an investment of $120,000 represented by real estate, and the rents upon the same would have been profits. What, then, would have been the result of this transaction when it was finally closed? Clearly instead of profits a loss represented by the shrinkage in value of the property during that time of $46,293.21.

But, assuming the situation was one where some might contend, as did the court below, that the language of Congress was intended to treat the transaction as a purchase and sale of property without reference to what its use was during the interim, it seems to us the opposite view might very reasonably be taken of holding Mr. Knox's tenure as made up of two transactions, one, the residential one, which had ceased to exist long before and to which the law did not apply, the other, a purely business venture, unfortunate in its results, but one which the law fairly contemplated should be offset against other

items of income which the owner of the property sustained. It seems to us therefore with this double interpretation in the balance that the law would then resolve that uncertainty against the Government in favor of the taxpayer. Assured as we are that this latter transaction was one entered into and carried on for profit, the decedent, in the assessment of his net income, should have been allowed credit for the loss resulting therefrom.

The judgment below will therefore be reversed with instructions to enter judgment for the taxpayer's estate.

(Indorsements:) 3594. Opinion of the court by Buffington, J. Received and filed April 4, 1927. Saunders Lewis, jr., clerk.

J. R. Tindle et al., executors; Philander C. Knox, deceased, plaintiffs in error, *v.* D. B. Heiner, collector, defendant in error

In error to the District Court of the United States for the Western District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, reversed, with instructions to the said district court to enter a judgment in favor of the plaintiffs.

Philadelphia, April 4, 1927.

Per curiam:

BUFFINGTON,
*Circuit Judge.*

(Indorsements:) 3594. Order reversing judgment received and filed April 4, 1927. Saunders Lewis, jr., clerk.

*The President of the United States of America, to the honorable the judges of the District Court of the United States for the Western District of Pennsylvania, greeting:*

Whereas lately in the District Court of the United States for the Western District of Pennsylvania, before you or some of you, in a cause between James R. Tindle and the Union Trust Company of Pittsburgh, coexecutors of the last will and testament of Philander C. Knox, deceased (plaintiffs below), plaintiffs in error, and D. B. Heiner, collector of United States internal revenue for the 23d district of Pennsylvania (defendant below), defendant in error, a judgment was entered in the said district court on the twenty-first day of January, 1927, which judgment is of record in the office of the clerk of the said district court, to which reference is hereby made, and the same is hereby expressly made a part hereof, as by the inspection of the transcript of the record of the said district court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, more fully and at large appears.

And whereas, in the present term of March, in the year of our Lord one thousand nine hundred and twenty-seven, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, reversed, with instructions, to the said district court to enter a judgment in favor of the plaintiffs.

Philadelphia, April 4, 1927.

You, therefore, are hereby commanded that such execution and further proceeding be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, at Philadelphia, the ninth day of May, in the year of our Lord one thousand nine hundred and twenty-seven (1927).

SAUNDERS LEWIS, Jr.,
*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

Original file No. 3594. U. S. Circuit Court of Appeals, third circuit. No. 3, March term, 1927. J. R. Tindle et al., executors, P. C. Knox, deceased, plaintiffs in error, *v.* D. B. Heiner, collector, defendant in error. Copy of mandate. Received and filed May 9, 1927. Saunders Lewis, jr., clerk.

UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania, third judicial circuit, sct:*

I, Saunders Lewis, jr., clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this court in the case of James R. Tindle et al., plaintiffs in error, *v.* D. B. Heiner, collector, defendant in error, No. 3594, on file, and now remaining among the records of the said court, in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia this 21st day of June, in the year of our Lord one thousand nine hundred and twenty-seven, and of the independence of the United States the one hundred and fifty-first.

[SEAL.] SAUNDERS LEWIS, Jr.,
*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

U. S. GOVERNMENT PRINTING OFFICE: 1927